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HARRISBURG, PA

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY E. D'ANDREA, CLERK
Per *rw*

KIM SMITH,

Plaintiff,

v.

JAMES MORGAN, et al.,

Defendants.

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Civil No. 1:01-CV-0817

(Judge William W. Caldwell)

(M.J. Malachy E. Mannion) ✓

**CORRECTIONS DEFENDANTS' MOTION
TO STRIKE PLAINTIFF'S MOTION TO COMPEL**

The Corrections Defendants, by and through their attorney, John J. Talaber, Assistant Counsel, Pennsylvania Department of Corrections, respectfully request this Honorable Court to strike Plaintiff's Motion to Compel (doc. 71). The following averments are made in support of this Motion:

Parties and Nature of Action:

1. Plaintiff Kim Smith is an inmate currently incarcerated at the State Correctional Institution at Coal Township ("SCI-Coal Township"). See Amended Complaint (doc. 20), p. 12.
2. The Department of Corrections Defendants ("Corrections Defendants") include: (1) Kathy Allen; (2) Nancy Ambrose; (3) Mary Bernas; (4) Sharon Burks; (5) Kandis Dascani; (6) John Dunn; (7) Harry Ersek; (8) Frank Gillis;

(9) Robert Glenny; (10) Robert Gooler; (11) Dr. Robyn Johns; (12) Roy Johnson; (13) Tim Jordan; (14) Bernon Lane; (15) John Learn; (16) Edward Mason; (17) Miller; (18) James Morgan; (19) Wilma Sewell; (20) Raymond Smith; (21) David Varano; (22) Voeckler; (23) George Weaver; (24) Lynn Wolfgang; (25) Gerald Whyson; (26) Pat Yarger; (27) Angela Zimmerman; and (28) Hazel Zimmerman. See Amended Complaint, pp. 1-16.

3. Smith also names as Defendants Wexford Health Services, Inc. and Dr. Ronald Long, who are represented by James D. Young, Esquire. See Entry of Appearance (doc. 28).
4. In this 42 U.S.C. §1983 action, Smith alleges that the Corrections Defendants violated his First, Eighth, and Fourteenth Amendment rights under the United States Constitution. See Amended Complaint, pp. 1-16.
5. Smith is suing the Corrections Defendants in their individual capacities. See Amended Complaint, p.8.
6. Smith seeks injunctive relief, as well as, compensatory and punitive damages. See Amended Complaint, pp. 1-16.

Relevant Procedural History:

7. Smith initiated this action with the filing of a Complaint and an Application for In Forma Pauperis status on May 10, 2001. See Complaint (doc. 1); Application to proceed IFP (doc. 2).
8. The Court, by Order dated June 6, 2001, directed Smith to file an Amended Complaint on or before July 6, 2001. See Order (doc. 8).
9. On July 11, 2001, Smith filed an Amended Complaint. See Amended Complaint (doc. 20).
10. On August 3, 2001, the Court found that Smith's Amended Complaint substantially complied with its previous orders, and directed the Clerk of Court to serve process on the Defendants. See Order (doc. 24).
11. On or about September 26, 2001, the undersigned attorney waived service of summons for the Corrections Defendants.
12. On November 6, 2001, the Corrections Defendants waived their right to reply to Smith's Amended Complaint pursuant to 42 U.S.C. §1997(e). See Waiver of Reply (doc. 33).

Outstanding Discovery Matters:

13. On January 14, 2002, Smith filed a motion to "extend time to obtain copies" (doc. 14) and on January 28, 2002 filed a "reply" to a "Court Order about defendants request for Documents." (doc. 54). The essence of Smith's

documents related to his ability to pay for copies of documents that the Corrections Defendants requested from him with a Request for Production of Documents. Despite the fact that the Corrections Defendants agreed to pay for any copies they made relating to their Request for Production of Documents, Smith refused to turn over his only copy to Department of Corrections personnel. Ultimately, this issue was resolved on or about April 10, 2002 when Smith was permitted to stand in the Unit Manager's Office at SCI-Coal Township while Department staff make copies of the documents he produced so that he could be sure no one tampered with his materials.

See Memorandum to John J. Talaber from SCI-Coal Township

Superintendent's Assitant Kandis Dascani dated April 10, 2002; see also Memorandum to Plaintiff from Kandis Dascani dated April 16, 2002. Both documents, pursuant to Pa.MDLR 5.1(f), are attached to the Supporting Documents to this Motion respectively as Exhibit A and B. Accordingly, the undersigned attorney believes that the issues raised in Smith's court filings (docs. 14 & 54) have been resolved.

14. On June 28, 2002, Smith filed a Motion to Compel discovery relating to his request for documents that were never formally sought from the Corrections Defendants pursuant to Fed.R.Civ.P. 34. Specifically, Smith seeks a Court order directed to the Corrections Defendants to provide him with "the DOC

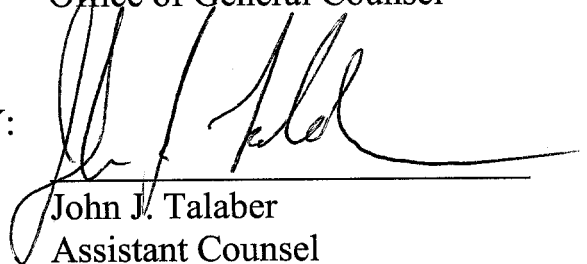
Directive that ordered the Department of Correction to cut off power in all institutional RHU cells.” (Doc. 67). Further, Smith seeks an Order directed to the “[m]aintenance (sic). Department at SCI-Smithfield to provide him with the status of plug sockets in RHU on H-2 and any repairs made from January 2000.” (*Id.*). Finally, Smith seeks an order directing “the Medical Records Department at SCI-Coal Township to provide [him with] a copy of certain medical records as evidence to support his claim . . .” (*Id.*)

15. Notwithstanding the fact Smith has never appropriately requested the documents, nor has he filed a Supporting Brief to his Motion, in recognition of Plaintiff’s *pro se* status and in the interests of moving this matter forward through the discovery process, the undersigned attorney on behalf of his clients is serving Plaintiff with a formal response to his request. See Corrections Defendants Response to Plaintiff’s First Request for Production of Documents, attached to the Supporting Documents to this Motion as Exhibit C.

WHEREFORE, for the reasons set forth above, the Corrections Defendants respectfully request this Honorable Court to strike Smith's Motion to Compel discovery as moot.

Respectfully submitted,
Office of General Counsel

BY:

A handwritten signature in black ink, appearing to read 'John J. Talaber', is written over a horizontal line.

John J. Talaber
Assistant Counsel
Pa. Department of Corrections
55 Utley Drive
Camp Hill, PA 17011
(717) 731-0444
Attorney No. 83279

Dated: July 31, 2002

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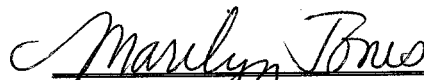
CERTIFICATE OF SERVICE

I undersigned hereby certifies that a copy of the Corrections Defendants' Motion to Strike Plaintiff's Motion to Compel in this matter was served upon the person(s) in the manner indicated below.

Service by first-class mail
addressed as follows:

Kim Smith, CT-2162
SCI-Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020

James D. Young, Esquire
Lavery, Faherty, Young and Patterson, P.C.
301 Market Street
P.O. Box 1245
Harrisburg, PA 17108-1245


Marilyn Jones
Clerk Typist II

PA Department of Corrections
55 Utley Drive
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Dated: July 31, 2002